IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.04.2005

CORAM:

THE HONOURABLE MR.MARKANDEY KATJU, THE CHIEF JUSTICE
AND
THE HONOURABLE MR. JUSTICE F.M.IBRAHIM KALIFULLA

W.A. No. 1742 of 1999

1. Gunasekaran
2. Subramaniam
3. Chandrasekaran
4.Panneerselvam

Appellants/ Petitioners

Vs.

1. State of Tamilnadu rep. by
   its Secretary to Government,
   Adi Dravidar and Tribal Welfare
   Department, Secretariat,
   Chennai-600 009.

2. The District Collector,
   Namakkal District, Namakkal.

3. Land Acquisition Officer and
   Special Tahsildar,
   Adi Dravidar Welfare,
   Namakkal.

Respondents/ Respondents

Prayer: Appeal under clause 15 of the Letters Patent against the order of this Court made in W.P.No.5973 of 1999 dated 6.8.1999.

For Appellants :: Mr.V.K.Vijayaragavan

For Respondents :: Mr.V.Raghupathi,
Government Pleader.

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JUDGMENT

(Judgment of the Court was delivered by
The Hon'ble Chief Justice.)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 6.8.1999. Heard the learned counsel for the parties and perused the records.

2. The case relates to a proceeding under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as 'the Act'). It appears that the original land owner was one Ramasamy Gounder, who died in Singapore ten years before the land acquisition proceedings began. There is nothing to show that a show cause notice was served under section 4 (2) of the Act by the District Collector on the heirs of Ramasamy Gounder. Section 4(2) of the Act reads as follows:-

> "Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired."

3. A perusal of section 4(2) shows that it is mandatory on the District Collector or any officer authorised by him to serve a show cause notice on the land owner or any other person who is interested in the land. There is nothing from the records of the case to show that a notice was served by the District Collector in accordance with section 4(2) of the Act. All that has been said in paragraph 5 of the counter affidavit is that the land owner or person interested did not inform the authorities as to who is the land owner.

4. Paragraphs 5 and 6 of the counter affidavit read as follows:-

> "5. It is submitted that acquisition land in S.No.169/4 measuring 1.76.9 hec. of Periapatty village stands registered in the name of Ramasamy Gounder, s/o Sankara Gounder, who died 10 years back at Singapore. His legal heirs were all residing at Singapore. The village accounts are in the name of late Ramasamy Gounder till date. The interested persons on the above land would have informed the fact to the Village Administrative Officer of Periapatty and got the name

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changed in the patta register. Ramasamy Gounder died 10 years back. But the revenue accounts are still in the name of Ramasamy Gounder even though the land revenue dues are being remitted without changing the name of the pattadar in revenue accounts. Hence it is not correct to say that the acquisition proceedings have been initiated by the respondent against a dead person.

6. It is learnt that late Ramasamy Gounder is petitioner's sister's husband. The petitioner would have informed the above fact and got a new patta in the name of legal heirs of the deceased Ramasamy Gounder. While perusing the affidavit of the petitioner, he has informed that he is the power agent of the land in question. Hence the averments of the petitioner are irrelevant and baseless may be rejected." (sic.)

5. A perusal of these paragraphs clearly shows that the respondents in the writ petition had a legal misconception that it is not the duty of the District Collector to serve a show cause notice on the land owner or person interested, but rather it is the duty of the land owner or persons interested to inform the District Collector that they are the land owners. The averments in the counter affidavit clearly disclose that it is this legal misconception which the respondents were under.

6. Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 states:-

"3. Procedure for acquiring land.-- (i) The District Collector or the Officer authorised by him in this behalf shall serve a show cause notice in Form I under sub-section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post (Acknowledgement Due) to the last known address of the owner or any other person interested.

(ii) The District Collector, if, after passing such orders as required by sub-sections (2) and (3) of Section 4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

7. Section 4(2) read with Rule 3 thus clearly indicates that it is mandatory on the District Collector to serve notice on the land owner or person interested otherwise the entire proceedings get vitiated.

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8. It may be mentioned that after the proceedings under section 4(2) are over, the land can be straight away acquired under section 4(1) of the Act. This makes it all the more necessary to hold that it is mandatory on the District Collector to serve a show cause notice on the land owner or person interested, otherwise Article 300A of the Constitution will be violated.

9. Since in this case it is evident from the records that a show cause notice under section 4(2) was not served on the land owner or person interested, we are of the opinion that the entire acquisition proceedings under the Act are vitiated and they are hereby set aside. The writ appeal as well as the writ petition are allowed. No costs.

ns.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Adi Dravidar and Tribal Welfare
   Department, Secretariat, Chennai-600 009.

2. The District Collector,
   Namakkal District, Namakkal.

3. The Land Acquisition Officer and
   Special Tahsildar, Adi Dravidar Welfare,
   Namakkal.

+ 1 cc to the Government Pleader, SR 16862

+ 1 cc to Mr.V.K.Vijayaragavan, Advocate SR 17267

NG(CO)
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